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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,848	01/08/2007	Smadar Cohen	0-06-119	3923

7590 04/14/2009
Kevin D McCarthy
Roach Brown McCarthy & Gruber
1620 Liberty Building
Buffalo, NY 14202

EXAMINER

KETTER, JAMES S

ART UNIT	PAPER NUMBER
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1636

MAIL DATE	DELIVERY MODE
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04/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,848	Applicant(s) COHEN ET AL.	
	Examiner James S. Ketter	Art Unit 1636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/5/06; 8/11/06; 9/8/06</u> . | 6) <input type="checkbox"/> Other: ____. |

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1 and 6, and therefore claims 2-5 and 7-23 which depend therefrom, claims 1 and 6 recite “impermeable”. However, it is not clear what this term means, as materials differ in their impermeability or relatively impermeability to different fluids, solvents, particulates, and so forth. Furthermore, impermeability may also refer to radiation or sound waves, i.e., acoustics. As such, the metes and bounds of the claims are unclear.

Regarding claims 2-5, 30 and 31, the phrases “preferably” or “more preferably” render the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 5 recites a trademark, “PlexiglasTM”. However, the trademark name is used in a claim as a limitation to identify or describe a particular material or product, and as such the claim does not comply with the requirements of the 35 U.S.C. 112, second paragraph. See MPEP §2173.05(u).

Claims 6 and 10, and therefore claims 7-9 and 11-23 that depend therefrom, recite the phrase “a predetermined distance”. However, it is unclear how a “predetermined” distance differs from any other distance. Whether or not the distance was preconceived by the practitioner or arrived at by trial-and-error, for example, the distance is the same. As such, the meaning of the limitation is not clear, and the metes and bounds of the claims are indefinite.

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Claims 8-10, 24, 27, and therefore 11-13, 25 and 26 that depend therefrom, recite “substantially”. However, this term is not defined in either the specification or the prior art to be of sufficiently precise meaning in the contexts employed in the instant claims. As such, the metes and bounds of the claims are unclear.

Claims 16-18 recite “suitable”. However, the mere, unqualified term “suitable” has no meaning, because it is not made clear for what the referenced component is suited.

Regarding claim 17, the phrase “such as” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 18 recites “suitable means”, referring back to the claim from which it depends, written as claim 7. However, claim 7 lacks antecedent basis for this phrase. It would appear that claim 17 was intended.

Claim 21 recites “said fluid distributor mesh”. However, in the claim from which it depends, 20, there are actually two fluid distributor meshes recited, going back to claim 19. As such, the actual antecedent basis for the recitation in claim 21 is unclear, i.e., unclear which one is being referenced.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Ketter whose telephone number is 571-272-0770. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSK
14 April 2009

/James S. Ketter/
Primary Examiner, Art Unit 1636